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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,704	06/12/2001	Yasufumi Fukuma	1711514	3792
24240	7590	05/20/2005	EXAMINER	
CHAPMAN AND CUTLER 111 WEST MONROE STREET CHICAGO, IL 60603			DESIRE, GREGORY M	
		ART UNIT		PAPER NUMBER
				2625

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/879,704	FUKUMA ET AL.
	Examiner	Art Unit
	Gregory M. Desire	2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 November 2004.
- 2a) This action is FINAL.                                   2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 28-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 28-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 June 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION**

1. This action is responsive to communication filed 11/15/04.

***Response to Amendment***

2. Applicant's amendment, see page 7-10, filed 11/15/04, with respect to the newly added claims 28-38 is being considered. The previous claims have been cancelled. Therefore, the rejection is moot. However, upon further consideration of newly added claims, a new ground(s) of rejection is made in view of Saigo and Foley.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 28-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saigo (6,142,628) in view of Foley (6,535,223).

Regarding claims 28 and 29 Saigo discloses,

A mean is adapted to receive information on personal facial pictures of a number of persons and eyeglass frames, selected by a number of the persons (note col. 7 lines

55-60, col. 8 lines 65-67, col. 10 lines 15-30, lines cite portrait data personal facial pictures and eyeglass frames selected. This information is stored in database.

Statistical analyzing means is adapted to divide the plurality of each facial types of the personal facial picture of each number of the person into a plurality of components (note col. 8 lines 24-29, facial picture is divided into plurality of components (areas).

Classify each of divided components into a plurality of types with respect to a number of persons (note col. 8 lines 41-55).

Statistically analyze a relationship between a plurality of facial types and selected eyeglass frame with respect to each of the divided components; and thereby collect data for associating the facial types of a number of the persons with the eyeglass frame selected by each person (note col. 10 line 15-35 and col. 11 lines 20-26, screen of a face wearing selected frame and lens is displayed, thus showing the relations between facial type and eyeglass frame, data is collected when you click on the frame that is liked.).

Memory means adapted to preserve the data selected by each person and facial types of the plurality of persons (note fig. 1 step 4 data is stored).

However, Saigo does not disclose a web server. Foley discloses a web server allows user to view, select, order and pay for eyewear through the web browser (note col. 4 lines 39-41). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a web browser in the system of Saigo. Ordering and paying for eyewear would have been highly desirable feature in

the eyeglass frame selection system due to its interactive functions and Foley recognizes that viewing, selecting, ordering and paying would be expected when the web server of Foley is included in Saigo.

Regarding claim 30 Saigo and Foley discloses,

A selecting means for selecting an eyeglass frame memorized in said memory means; and a showing means for showing the selected eyeglass frame (note Saigo col. 8 lines 30 and fig. 5).

Regarding claim 31 Saigo and Foley discloses,

Display means for displaying the relationship between said plurality of facial types and said selected eyeglass frame by a statistical display method, an association between said plurality of the facial types and selected eyeglass frame being performed by manual input (note fig. 6 and col. 11 lines 20-26, shows relationship between eyeglass frame and facial image).

Regarding claim 32 Saigo and Foley discloses,

Statistical analyzing means has an extracting means for extracting said facial component from said picture (note portrait data),

Regarding claim 33 Saigo and Foley discloses,

Wherein said facial component is selected from facial contour, hair, facial color, eyes, eyebrows nose, ears, mouth and jaw (note Saigo, fig. 4 shows facial components).

Regarding claim 34 Saigo and Foley discloses,

Wherein at least age and gender are transmitted together with said facial picture to be reflected to database construction (note Saigo fig. 3 gender and age group is requested).

Regarding claim 35 Saigo and Foley discloses,

Wherein racial information is transmitted together with said facial picture to be reflected to the database construction (note Saigo fig. 2, costumer registration).

Regarding claim 36 Saigo and Foley discloses,

Wherein said selected eyeglass frame is subdivided in any combination of component such as shape color, material, marker name and designer name to associated with said type of facial component (note Saigo fig. 5 frame decision).

Regarding claims 37 and 38 Saigo and Foley discloses,

Wherein preference degree for a former selected eyeglass frame is determined on the basis of time interval between the former selected eyeglass frame and latter selected eyeglass frame (note Saigo, fig. 6).

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory M. Desire whose telephone number is (571) 272-7449. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory M. Desire  
Examiner  
Art Unit 2625

G.D.  
May 16, 2005



BHAVESH M. MEHTA  
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